

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1814 OF 2006

Grasim Industries Limited

Petitioner

vs.

The Chief Commissioner of Income-tax
IV, Aayakar Bhavan, Mumbai & ors.

Respondents

Mr.J.D.Mistry i/b.M/s.Dave & Girish & Co. for the
petitioner.

Mr.A.D.Kango for the respondents.

**CORAM : H.L.GOKHALE &
V.R.KINGAONKAR,JJ.**

DATED : 7th August, 2006

P.C.

Heard Mr.Mistry in support of this petition.

Mr.Kango appears for the respondents.

2. The petition seeks to challenge the order dated 10th February, 2006 passed by the respondent no.1 herein whereunder the respondent no.1 has, on the one hand, accepted the petitioner's claim for waiver of interest, but, on the other hand, refused to grant the actual benefit merely on the ground that the amount of interest is already paid by the assessee.

3. The respondents have filed their reply. We have perused it.

4. We issue rule and make it returnable forthwith. We have heard the counsel for both the parties since the question involved is very limited.

5. The case of the petitioner is that under Section 35DDA of the Income Tax Act, the petitioner had made certain payments under the Voluntary Retirement Scheme. What had happened is that this section was inserted by the Finance Act, 2001. When the bill was moved in the Parliament earlier, it was supposed to come into effect from 1.4.2002, but when the Finance Act was passed, it was made effective from 1.4.2001 by which date the time to pay the advance tax was over. To tide over the problem arising therefrom a notification was issued by the respondent no.3 on 23rd May, 1996 under Section 119 of the Act. This notification permitted the parties to claim waiver of interest charged under Sections 234A, 234B or 234C as the case may be. It was, however, made clear that no reduction or waiver of such interest shall be permitted unless the assessee has first filed the return of income for the relevant Assessment Year and paid the entire tax due on the income assessed except the amount of interest for which reduction or waiver has been requested for.

6. In the instant case, the petitioner filed the return

accordingly pointing out the payment made under the Voluntary Retirement Scheme and making it clear that application was being made separately for waiver of interest for Rs.26,11,284/-. Mr.Mistry fairly states that there is some error in the calculation and the correct amount is in fact Rs.20,82,949/-. The waiver of interest is sought of this amount by specifically so stating while filing the return. It so happened that a larger amount was refundable to the petitioner from which the interest amount was recovered. When the matter finally reached the respondent no.1, the respondent no.1 noted that the Assessing Officer has accepted the assessee's claim for waiver of interest to the extent of the increase in the advance tax the liability resulting from a retrospective amendment of Section 35DDA, yet the respondent no.1 stated that the same cannot be said to be true when the same is mandatorily payable under the existing provisions of the Income Tax Act. As noted above, there is no such provision under which the amount was mandatorily payable and in fact the petitioner was eligible to the waiver of the interest for this particular year. Strangely enough, in paragraph 7, the CIT noted that the petitioner is eligible to keep back the amount of interest for which the waiver is sought, yet thereafter stated that in fact the petitioner has already paid the interest amount and, therefore, there is no question of

waiver being granted.

7. Obviously, there is an error on the part of the respondent no.1. If a larger amount is refundable to the petitioner that does not give a right to the respondent to deny the refund of interest which is otherwise duly claimable and for which a waiver is sought by the assessee.

8. In the circumstances, we interfere with this order to the extent of this observation in paragraph 7 of the order dated 10th February 2006 and direct the respondent to grant waiver of the interest under Section 234-C of the Act for the Assessment Year 2001-2002 aggregating to Rs.20,82,949/-. Accordingly, the respondents will issue the necessary refund order of this amount and further interest, if any, in accordance with law. We make it clear that the present order is confined to the claim of waiver under Section 234-C of the Income Tax Act.

9. Rule is made absolute in the above terms with no order as to costs.

(H.L. GOKHALE, J.)

(V. R. KINGAONKAR,J.)